

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AKEEM MUSA,

Plaintiff,

v.

KABUL, INC. and HAMED ZAFARI,

Defendants.

ORDER

15-cv-804-jdp

Plaintiff Akeem Musa seeks unpaid wages from defendants. Defendant Kabul, Inc. is a corporation operating a restaurant in Madison, Wisconsin. Defendant Hamed Zafari is the owner of Kabul. Kabul is unrepresented. Zafari is pro se. The court has advised Kabul numerous times that Kabul must retain counsel to appear in this case because it is a corporation and that failure to retain counsel can result in a default judgment against it. Dkt. 6; Dkt. 8; Dkt. 16; Dkt. 18. Kabul is still unrepresented. Musa sought to dismiss Zafari from this case under Federal Rule of Civil Procedure 41(a)(2). The court denied that motion and explained that Rule 41(a)(2) was not the proper vehicle to dismiss a party from an action. Dkt. 23.

Musa now moves under Rule 15(a)(2) for leave to file an amended complaint. Dkt. 24. He has attached the proposed amended complaint to his motion and represents to the court that the only difference between the original complaint and the amended complaint is that the latter leaves Kabul as the sole defendant. Musa also states that he has made numerous attempts to contact Zafari but received no response.

The court will grant Musa's motion. Rule 15(a)(2) permits a party to amend his pleading by "leave of court . . . which shall be freely given when justice so requires." Thus, a

district court should grant leave to amend a complaint unless the court finds “undue delay, bad faith, dilatory motive, undue prejudice to the opposing party, or when the amendment would be futile.” *Bethany Pharmacal Co. v. QVC, Inc.*, 241 F.3d 854, 861 (7th Cir. 2001). Here, the court finds no reason to deny Musa leave to amend the complaint. Musa should file the amended complaint as a separate document, serve a copy on Kabul, and submit proof of service to the court. Under Rule 15(a)(3), Kabul may have 14 days from the date of service to respond the amended complaint. And because the amended complaint supersedes the original complaint, Musa’s motion for entry of default, Dkt. 21, will be denied.

ORDER

IT IS ORDERED that:

1. Plaintiff Akeem Musa’s motion for leave to file first amended complaint, Dkt. 24, is GRANTED.
2. Plaintiff shall serve a copy of the amended complaint on defendant Kabul, Inc.
3. After being served with a copy of the amended complaint, defendant Kabul, Inc. shall have 14 days to respond to the amended complaint.
4. Plaintiff’s motion for entry of default, Dkt. 21, is DENIED.
5. Hamed Zafari is no longer a defendant in this case, and the Clerk’s office will update the caption accordingly.

Entered October 5, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge